THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION No.1850 of 1996

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Date: 26-09-2005

Between:

Smt. Velpula Ankamma @ Anku Bai **..PETITIONER**

A n d

1. The Sub-Collector, Asifabad, Adilabad Dist and others

..RESPONDENTS

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION No.1850 of 1996

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ORAL ORDER:

During the proceedings for acquisition of the land of the petitioner, 3rd respondent filed a petition before the 1st respondent (Sub-Collector) claiming that he is a protected tenant in respect of Acs.12-00 in S.No.64 of Thumpalli village, Asifabad Mandal, Adilabad District and so he is entitled to compensation. First respondent, treating the said petition as a petition under Section 32 of the A.P. (Telangana Area) Tenancy & Agricultural Lands Act, 1950 (the Act), and holding that the S.No.64 mentioned in the application is a mistake for S.No.63, directed to record the name of 3rd respondent as protected tenant over Acs14-28gts in S.No.63 of Thumpalli village under Section 37 of the Act read with rule 3 of Hyderabad Tenancy Records (Correction) Rules, 1956, and wanted the Mandal Revenue Officer, Asifabad, to put the 3rd respondent in possession of the land, after correcting the revenue records.

2. The contention of the learned counsel for petitioner is that since 3rd respondent never claimed any protected tenancy rights in S.No.63 and since 1st respondent is not the competent authority to decide the issue relating to protected tenancy, 1st respondent was in error in passing the order impugned, that too after a long lapse of more than 40 years, since even according to the 3rd respondent he never claimed any rights subsequent to 1956 in the said land and came up with an application only in 1996. He placed strong reliance on **S.VENKATAREDDY v. JOINT COLLECTOR, RANGAREDDY DIST.** where it is held that until the ownership certificate reaches finality it cannot be held to be a conclusive evidence of ownership and that a person cannot be deemed to be a protected tenant unless an enquiry is made by the Tribunal as per the tenancy records, and also on **BHEEMATI DAWOOD v. MADICHETTY RACHAIAH AND OTHERS** where basing on the ratio i n **PONNALA NARASIMHA RAO v. NALLOLLA PANTAIAH** it is held that a protected tenant who surrendered his possession in 1963 cannot, after a long lapse of 30 years, seek recovery of possession.

3. The contention of the learned Assistant Government Pleader is that since the petitioner has an effective alternative remedy of appeal, this petition without exhausting the alternative remedy is not maintainable.

4. Though served 3rd respondent did not put in his appearance.

5. On my directions, the learned Assistant Government Pleader produced the relevant file, which shows that the 1st respondent recorded the statements of 3rd respondent and the petitioner before passing the order impugned. In his statement, 3rd respondent stated that he is the protected tenant in respect of the land in S.No.64 which was a patta land of Smt.Rasool Bee and that he cultivated about Acs.12-00 therein about 30 years ago, and about two years after police action he wanted to purchase the said land from the pattedar and entered into an agreement to purchase the land at Rs.1500/- and paid Rs.200/- as advance and as he could not pay that money and as the mother of the petitioner approached the pattedar and offered to

purchase that land for Rs.2000/- the pattedar sold that land to her and subsequent to her death petitioner became the owner thereof and since he did not obtain the protected tenancy certificate earlier he filed an application for issuance of a protected tenancy certificate about three years back but no orders are passed thereon and that he left the cultivation of that land due to a dispute with his brothers and kept it fallow and so his pattedar leased out the land to Anumula Bhimaiah earlier to the purchase of the land by the mother of the petitioner and that he obtained favourable orders from the civil Court.

6. Petitioner stated that her mother purchased Acs.14-28gts in S.No.63 of Thumpally village from Smt.Rasool Bee and she being the only daughter inherited the said land after the death of her mother and that there was no protected tenancy over the said land, as seen from the certificate issued by the Tahsildar, Asifabad, and that she has been in continuous possession of the said land from 1959 onwards and that 3rd respondent never cultivated the said land after 1959.

7. By the order impugned 1st respondent held that Madavi Devu but not the petitioner, is the protected tenant of S.No.64 and so 3rd respondent has no right over the land in S.No.64, and since the name of the petitioner is recorded in S.No.63 he is treating the survey number '64' mentioned in the petition of the petitioner is a mistake for '63' and since a tenant at the time of commencement of the Act would be deemed to be a protected tenant under Section 34 of the Act, he is giving the direction to correct the entries in the records and to put the third respondent in possession of the said land.

8. Section 34 of the Act defines who all would be protected tenants within the meaning of the Act. As per Section 35 of the Act, dispute relating to protected tenancy between a landlord and the person so claiming has to be resolved by the Tahsildar (Mandal Revenue Officer) as per the procedure prescribed. Decision given by him, after making an enquiry, is subject to an appeal to the Collector and a second appeal to the Board of Revenue. So, 1st respondent (Sub-Collector) has no role to play in deciding the claims relating to protected tenancy, as the Tahsildar

(Mandal Revenue Officer) only is vested with such jurisdiction. Since 1st respondent assumed jurisdiction, which is not vested in him, for deciding the status of petitioner as a protected tenant, the fact that the petitioner did not prefer an appeal to the Collector cannot be a ground for dismissing this petition.

8. Column 15 of the Khasra Pahani contains the following entry.

Since the name of 3rd respondent is Velpula Peda Rajaiah, S/o Laxmaiah of Thumpalli village, question whether 3rd respondent is the same Velpula Rajaiah shown in the column 15 of the Khasra Pahani is a question, which has to be decided after taking evidence. Even assuming that both the Rajaiahs are the same since the 3rd respondent clearly stated that he gave up cultivation immediately after the agreement of sale fell through, and that pattedar herself was getting the said land cultivated, it is clear that 3rd respondent was not in possession of the land for more than 30 years prior to his filing of the petition before the 1st respondent. For that reason only the claim of the 3rd respondent deserves to be dismissed in view of the ratio in **BHEEMATI DAWOOD** case (2 supra) and so I hold that 1st respondent was in error in passing the order impugned.

9. Hence, the petition is allowed with costs. Rule Nisi is made absolute. Order of the 1st respondent impugned in the petition is quashed.

(C.Y.Somayajulu, J.)

Date: 26-09-2005

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